

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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DONALD MONTGOMERY,
ANDREW CARTER, LOIS REID,
KARL BECHLER, and "M.M.,"
as individuals, and on behalf of
all other persons similarly situated,

Plaintiffs,

v.

ANDREW M. CUOMO, Governor of the State
Of New York; ANN MARIE T. SULLIVAN,
Commissioner of the New York State
Office of Mental Health; MICHAEL C. GREEN,
Executive Deputy Commissioner of the
New York State Division of Criminal Justice Services;
JOSEPH A. D' AMICO, Superintendent of
the New York State Police; VINCENT F. DEMARCO,
Suffolk County Sheriff's Department; and,
EASTERN LONG ISLAND HOSPITAL,

Defendants.
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DECLARATION OF
DONNA MARIE CALL

Civil No.: 6:14-cv-06709

Hon. Charles J. Siragusa

DECLARATION OF DONNA MARIE CALL

DONNA MARIE CALL, in accordance with the provisions of 28 U.S.C. § 1746, declares
as follows:

1. I am employed by the New York State Division of Criminal Justice Services
("DCJS") as the Assistant Director of the Office of Criminal Justice Operations ("OCJO"). The
DCJS offices are located in the City of Albany, Albany County, New York.

2. I have held this title at DCJS for approximately four years. Prior to this position, I
was employed by DCJS as the Chief of Operations for three years. I originally began my
employment with DCJS in October 1975. Throughout the course of my nearly 40-year career
with DCJS, I have become, and remain, knowledgeable regarding its criminal justice operations.

3. In my capacity as the Assistant Director for the OCJO, I am responsible for, amongst many things, overseeing the electronic Criminal History Record Information transmitted to DCJS in connection with the Brady Handgun Violence Prevention Act of 1993 (“Brady Law”) and the NICS Improvement Amendments Act, Pub. L. No. 110-180, 121 Stat. 2559 (2008).

4. Prior to August 2014, I was responsible for overseeing, under a separate statutory regimen and in a separate database, reports pursuant to Mental Hygiene Law (“MHL”) § 9.46, a statute enacted as part of the Secure Ammunition and Firearms Enforcement Act (“SAFE Act”). In August 2014, MHL § 9.46 reporting became fully automated and requires no human involvement by DCJS.

5. It is my understanding that Plaintiffs challenge MHL § 9.46 in this action. I make this declaration for the purposes of providing the Court with relevant information pertinent to Plaintiffs’ claims and the State Defendants’ motion to dismiss.

NICS and the State’s Reporting Obligations under the Brady Law

6. Federal law prohibits the shipping, transportation or possession of a firearm by people who are disqualified on various grounds, including those who have been “adjudicated as a mental defective or who ha[ve] been committed to a mental institution.” 18 U.S.C. § 922(g)(4). The federal Brady Law established the National Instant Criminal Background Check System (“NICS”). NICS is a national system that stores and checks information as to whether a person is prohibited from possessing a firearm under federal law. NICS includes information on disqualifying conditions from both state and federal sources.

7. DCJS is the point of contact responsible for transferring New York State data to NICS. With respect to persons who have been committed to a mental institution or adjudicated

as mentally incompetent, DCJS receives data from the Office of Court Administration, the Office for People with Developmental Disabilities, the Department of Health, and the Office of Mental Health. This includes persons who have been involuntarily committed or confined pursuant to Articles 9, 10 or 15 of the Mental Hygiene Law, Article 730 or Section 330.20 of the Criminal Procedure Law, Section 402 or 508 of the Correction Law, or Section 322.2 or 353.4 of the Family Court Act. This information is transmitted electronically by DCJS to NICS.

8. DCJS does not input the data or otherwise review data relating to mental health disqualifications submitted by the agencies listed in paragraph seven. DCJS acts as a conduit between those agencies and authorized users of the data which include NICS and law enforcement agencies responsible for investigating applicants for a firearms license and returning seized firearms. The only exception is that DCJS has the capability to internally audit searches performed with respect to this information for the purposes of quality control and compliance. This process is fully automated and requires no human involvement once the data has been entered.

9. The State's receipt and reporting to NICS of disqualifying events, like involuntary commitment reports made pursuant to Article 9 of the Mental Hygiene Law¹, pre-dated the SAFE Act.²

¹ The label of MHL §9.41, which appears in the records maintained by DCJS, is a misnomer inasmuch as § 9.41 of the Mental Hygiene Law relates only to instances where law enforcement officers seek the emergency admission of a person for immediate observation, care, and treatment where such person "appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others." The identifier "MHL § 9.41" is used by DCJS as shorthand to identify individuals who have been reported as having been adjudicated mentally defective or involuntarily committed to a mental institution under provisions of the Mental Hygiene Law where such commitment constitutes an involuntary commitment for the purposes of 18 U.S.C. § 922(g)(4).

² The SAFE Act amended Penal Law § 400.00 to amend the eligibility requirements for a firearms license in New York to conform with federal law, so that those persons who are

The SAFE Act and MHL § 9.46

10. Mental Hygiene Law § 9.46 was enacted as part of the SAFE Act in 2013. It establishes a requirement that mental health professionals report when, in their professional judgment, one of their patients is “likely to engage in conduct that would result in harm to self or others.” MHL § 9.46. The report is made to the county Director of Community Services or his or her designee (“DCS”). Upon receiving a § 9.46 report, the DCS must review the matter to determine whether the report should issue. MHL § 9.46. If the DCS agrees with the mental health professional’s assessment, he or she will then report to DCJS. By statute, the DCS’s report may transmit only the “name[] and other non-clinical identifying information” of such individual to DCJS. MHL § 9.46. DCJS will then determine if the individual who is the subject of the § 9.46 report has or has applied for a firearms license and, if so, will work with the State Police, as set forth in more detail in paragraph 13, below, to notify the appropriate local licensing officer. MHL § 9.46.

11. No MHL reports maintained by, or sent through, DCJS contain clinical information or medical or mental health diagnoses, and MHL § 9.46 reports are no different. The non-clinical information found in the DCJS database in relation to MHL § 9.46 reports is

federally prohibited from possessing guns, including those disqualified on mental health grounds under 18 U.S.C. § 922(g)(4), are also expressly precluded from having a firearms license by state law. *See* Penal Law § 400.00(1). For that reason, reports of involuntary commitments which have been made to NICS for years, are now also run against a database of State firearms licensees to identify those persons who are not permitted to legally possess a gun. *See* MHL §§ 7.09(j), 33.13(c)(15); *see also* Penal Law § 400.00(11)(a) and (c), § 400.00(4), and Penal Law § 400.02. Pursuant to this change in the law, the same non-clinical identifying information regarding, for example, an individual’s involuntary commitment that the State has, for years, sent to the FBI to update NICS is now also compared with a list of State firearms licensees to determine whether the individual has a firearms license that, pursuant to new Penal Law § 400.01(j), he or she is precluded from having.

maintained solely for the purpose of determining whether an individual who has been reported pursuant to that statute holds or has applied for a firearms license.

12. The available fields in the database described in paragraph four, with respect to MHL § 9.46 reports, are listed below. Not all fields are used in every report.

- a. Correlation ID
- b. Message Key (MKE)
- c. Originating Agency (ORI)
- d. NAME (NAM)
 - i. Last Name
 - ii. First Name
 - iii. Middle Name
 - iv. Suffix/Cadence
- e. Agency Record Identifier (ARI)
- f. Gender (SEX)
- g. Prohibiting category (PCA)
- h. Date of Birth (DOB)
- i. State of Residence (SOR)
- j. Denying Agency (DNY)
- h. Originating Agency Case Number (OCA)
- i. Height (HGT)
- j. Weight (WGT)
- k. Place of Birth (POB)
- l. Eye Color (EYE)
- m. Hair Color (HAI)
- o. Race (RAC)
- p. Miscellaneous Identification Number (MNU)
- q. Social Security Number (SOC)
- r. Scars, Marks, Tattoos, and Other Characteristics (SMT)
- s. Also Known As (AKA)
 - i. Last Name
 - ii. First Name
 - iii. Middle Name
 - iv. Suffix/Cadence
- t. Miscellaneous (MIS)
- u. Expiration Date (EXP)
- x. Address fields:
 - i. Address1 (ADD1)
 - ii. Address2 (ADD2)
 - iii. CITY
 - iv. STATE
 - v. Zip Code (ZIPC)
 - vi. COUNTY

13. As set forth above, the information maintained by DCJS in regard to MHL § 9.46 reports does not include clinical information but, instead, only includes information sufficient to identify the person who is subject to the report. Depending upon circumstances, the DCJS database may direct appropriate inquiries with respect to MHL § 9.46 reports in two fashions. First, if the person being inquired about has applied for a firearms license but does not yet have a license, the database will electronically notify the local officials properly investigating the license application pursuant to Penal Law § 400.00(4) whether a person matching the identifying information has been reported pursuant to MHL § 9.46. This process is completely automated. Second, if a MHL § 9.46 report has been issued, the identifying information is transmitted electronically to DCJS where the database automatically checks the subject of the report against the database of firearm license holders. If the subject holds a firearms license, an electronic message is transmitted to the New York State Police, notifying them of the association. New York State Police then confirms that the identified person has an active firearms license, and proceeds to notify the local licensing official of the report and, in some instances, collect the firearms or direct a local law enforcement agency to collect the firearms. Again, this DCJS notification system is completely automated and no human interaction is required on the part of DCJS.

14. The information reported to DCJS with respect to MHL § 9.46 reports, which is transmitted to DCJS electronically, does not contain patient status or a prohibiting category such as “involuntarily committed.” Additionally, MHL § 9.46 reports are not transmitted to the Federal Bureau of Investigation, which oversees the NICS system, and are not included in NICS.

Executive Law § 837(19), any names and non-clinical identifying information received by DCJS pursuant to MHL § 9.46 -- which, as noted, is the only type of information received and maintained pursuant to MHL § 9.46 -- is destroyed after five years, or immediately if, pursuant to a proceeding brought under Article 78 of the Civil Practice Laws and Rules, a court determines that the named individual is eligible for a license to possess a firearm.

The Individual Plaintiffs

18. I have been asked by DCJS's counsel's office to review data maintained by DCJS for mental health reports relating to Plaintiffs Donald Montgomery, Andrew Carter, Lois Reid, and Karl Bechler. As set forth below, there have been no MHL § 9.46 reports for three of these Plaintiffs, and as to one, he was previously reported as having been involuntarily committed, which disqualifies him from possessing a gun under federal law.

19. In regard to Donald Montgomery, DCJS has no record of any MHL § 9.46 report.

20. DCJS does, however, have a record indicating that, on or about May 23, 2014, Donald Montgomery was reported to DCJS as "adjudicated mental defective/committed to mental institution."

21. Annexed hereto as Attachment "A," I have attached computer screen shots of the IJ Portal for the MHL reports for Donald Montgomery. These images⁴ provide an accurate depiction of what a reviewer would see when researching MHL reports. They reflect the presence of a report that Donald Montgomery was involuntarily committed and the absence of any MHL § 9.46 report.

⁴The computer screenshots have been redacted to remove certain confidential information such as Social Security numbers, internet addresses, usernames and ORI.

22. In regard to Plaintiff Andrew Carter, DCJS has no record of any MHL § 9.46 report for anyone matching the individual described in the Amended Complaint. Nor does DCJS have a record of an involuntary commitment report for this individual.

23. I also found no record of any MHL § 9.46 report concerning Lois Reid.

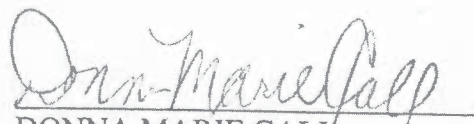
24. The only MHL report that I located pertaining to a person named Lois Reid was a record of an involuntary commitment created on or about December 24, 2013. This report indicates that the person named therein was reported as “adjudicated mental defective/committed to mental institution.” Annexed hereto as Attachment “B,” I have attached computer screen shots of the IJ Portal for the MHL reports for Lois Reid, reflecting the absence of a report pursuant to MHL § 9.46 and the existence of an involuntary commitment report.

25. In regard to Plaintiff Karl Bechler, records received by DCJS indicate that he was the subject of both an involuntary commitment report and an MHL § 9.46 report. The involuntary commitment record, which was created on or about September 6, 2013, indicates that Karl Bechler was reported as “adjudicated mental defective/committed to mental institution.” The MHL § 9.46 record indicates that he was reported to DCJS pursuant to MHL § 9.46 on or about September 12, 2013. Annexed hereto as Attachment “C,” I have attached computer screen shots of the IJ Portal for the MHL reports for Karl Bechler, reflecting both MHL reports just described.

26. DCJS does not have any role in the process of granting firearms licenses or seizing or returning firearms other than storing and transmitting data to legally authorized agencies through an automated process.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 25, 2015
Albany, New York


DONNA MARIE CALL

EXHIBIT

A

MHL Report Search

 **Warning**
No records found for the given search.

First Name:

Last Name:

Date of Birth:

SSN:

MHL Report Search Results

Patient First Name	Patient Last Name	Patient DOB	Patient SSN	Patient Address	MHP Name	MHP Phone	MHP Email	Reported By	Reported On	Jurisdiction

* = Denotes Required Field





NICS Involuntary MHI Search

First Name: (or) Last Name:
Date of Birth: SSN:

MHL NICS Report Search Help

MHL NICS Report Search Results

First Name	Last Name	Middle Name	Also Known As (AKA)	Date of Birth	SSN
DONALD	MONTGOMERY				

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* = Denotes Required Field



NICS Involuntary MHL Search

Primary Name: DONALD MONTGOMERY

Also Known As (AKA):

Date of Birth: [REDACTED]

SSN: [REDACTED]

Gender: Male

ORE: NY001013M - NYS OMH Bureau of Forensic Services

Prohibitory Category Code (PCA): D - Adjudicated mental Defective/Committed to Mental Institution

Agency Record Identifier (ARI): 754900000000127476052314

Denying Agency:

Originating Case No:

Expiration Date:

= Denotes Required Field

2014-12-16: Po

As functions in t
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2014-10-17 - M

The update to th
Missing Vulnerab
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includes instruct
missingpersonsa

2014-10-08 - S

As of April 8, 20
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A workstation us
customers in the

2014-09-24: Su

This memo is a
Offenders (JOs)

An on-line version of the "New York State Standard Practices for Fingerprinting Juveniles" (Manual). "The New York State Standard Practices Manual for Processing Fingerprintable Criminal Cases", is available at https://www.criminaljustice.ny.gov/bio/fp_services.htm on the Division of Criminal Justice Services (DCJS) website.

2014-08-12: GUN Reason Code

Proper use of Reason Codes when launching III searches and inquiries related to firearm releases, permits and renewals. [More](#)

Latest News

2014-12-22: eJusticeNY Integrated Justice Report Newsletter Issue 4 | 2014

<https://www.ejustice.ny.gov/ncj/myportal/ut/p/ut/ut.html> .SPCpKssy0pL1M4tGpCBfQwNqWMLwGdENIA_93JfHMDSAqCAsqMAA83AQfIS_IDfUEQADWEE/dIS/d5/12/21QfESJUSQ580SmfELa2a3vOTaYSQfBME1RDQWwSUAyQURtNEaMDAY

2014

have made it a priority to release upgrades and subancements to individual Portal portlets whenever we can. With nents for these changes and will be updating the full training documents for release on a bi-annual basis.

Update

was implemented on October 14, 2014. Requests for a NYS Missing Child Alert, Missing College Student Alert or nance with standard missing person cases (non-alert) can now be made from the missing person record via the available in the eJustice ID Portal (Resources > Reference Library >> Law Enforcement, Missing Persons) which the NYS Missing Persons Clearinghouse at 800-346-3543 or email at

MHL 9.46 Report Workbench

> MHL 9.46 Report Search

I-MHL 9.43 Report Search

I-MHL 9.43 Report Workbench

ing system will be required to take advantage of the Windows 7 version of SJS. ITS will be contacting r the upgrade. [More...](#)

Int and Juvenile Offender Arrest Fingerprints

ory responsibilities to take and submit to the Division of Criminal Justice Services (DCJS) fingerprints of Juvenile for all fingerprintable arrests.

An on-line version of the "New York State Standard Practices for Fingerprinting Juveniles" (Manual). "The New York State Standard Practices Manual for Processing Fingerprintable Criminal Cases", is available at https://www.criminaljustice.ny.gov/bio/fp_services.htm on the Division of Criminal Justice Services (DCJS)

EXHIBIT

B



MHL Report Search

Warning

First Name: LOIS

(or)

Last Name: REID

Date of Birth :

mm/dd/yyyy

SSN :

999-99-9999

MHL Report Search Help

MHL Report Search Results

SEARCH

RESET

Patient First Name	Patient Last Name	Patient DOB	Patient SSN	Patient Address	MHP Name	MHP Phone	MHP Email	Reported By	Reported On	Jurisdiction
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GO

* = Denotes Required Field



NICS Involuntary MHL Search

First Name: (or) Last Name:
Date of Birth: SSN:

MHL NICS Report Search Help

SEARCH RESET

MHL NICS Report Search Results

First Name	Last Name	Middle Name	Also Known As (AKA)	Date of Birth	SSN
LOIS	REID	JEAN			

= Denotes Required Field



NICS Involuntary MHL Search

Primary Name: LOIS JEAN REID

Also Known As (AKA):

Date of Birth:

SSN:

Gender: Female

ORI: NY001013M - NYS OMH Bureau of Forensic Services

Prohibitory Category Code (PCA): D - Adjudicated mental Defective/Committed to Mental Institution

Agency Record Identifier (ART): 657600000003879929122413

Denying Agency:

Originating Case No:

Expiration Date:

* = Denotes Required Field

CANCEL

EXHIBIT

C

People > Mental Hygiene Law > MHL 9.46 Record Search

MHL Report Search

First Name:
 (or)
 Last Name:

Date of Birth:
 SSN:

MHL Report Search Help

SEARCH RESET

MHL Report Search Results

Patient First Name	Patient Last Name	Patient DOB	Patient SSN	Patient Address	MMP Name	MHP Phone	MHP Email	Reported By	Reported On	Jurisdiction
Karl	Bechler								09/12/2013	Ontario

* = Denotes Required Field



NICS Involuntary MHL Search

First Name: (or) Last Name:
Date of Birth: SSN:

MHL NICS Report Search Help

SEARCH

RESET

MHL NICS Report Search Results

First Name	Last Name	Middle Name	ALSO Known As (AKA)	Date of Birth	SSN
KARL	BECHLER				

< > Page 1 of 1 > > GO

Denotes Required Field



NICS Involuntary MHL Search

Primary Name: **KARL BECHLER**

Also Known As (AKA):

Date of Birth: [REDACTED]

SSN: [REDACTED]

Gender: **Male**

ORI: **NY001013M - NYS OMH Bureau of Forensic Services**

Prohibitory Category Code (PCA): **D - Adjudicated mental Defective/Committed to Mental Institution**

Agency Record Identifier (ARI): **6377000000M0357756090613**

Denying Agency:

Originating Case No:

Expiration Date:

* = Denotes Required Field

CANCEL